

In Confidence

Office of the Minister of Agriculture
Chair, Cabinet Legislation Committee

Commodity Levies (Citrus Fruit) Order 2019

Proposal

1. This paper recommends that the Cabinet Legislation Committee (the Committee) authorise the submission of the Commodity Levies (Citrus Fruit) Order 2019 (the order) to the Executive Council. This order would replace the Commodity Levies (Citrus Fruit) Order 2014, which is due to expire on 23 February 2020.
2. Commodity levy orders made under the Commodity Levies Act 1990 (the Act) are submitted directly to the Committee without receiving prior Cabinet policy approval. This is because the Act specifies all of the policy criteria that need to be met for the making of an order.

Background

The Commodity Levies Act 1990

3. The Act enables primary industries to collectively fund non-commercial, 'industry-good' activities such as research and development through their national representative bodies. The Act provides for the responsible Minister to impose a mandatory levy on a commodity at the request of an industry organisation, provided that there is majority support from potential levy payers in that industry. Commercial growers are primarily responsible for paying the levy.
4. Commodity levy orders, the instruments responsible for imposing a levy, are initiated and developed by industry organisations and last a maximum of six years. Levy orders set the maximum levy rates payable and specify the purposes for which levy funds may be spent. Industry organisations determine how the levies are spent and at what rate they are collected through annual consultation with levy payers.
5. Key requirements of the Act include:
 - a. Section 5(2)(aa) requires over half of levy referendum participants to support the proposed levy;
 - b. Section 5(2)(ab) requires the referendum to be competently devised;
 - c. Section 5(2)(ad) requires the referendum to be adequately publicised; and
 - d. Section 5(2)(i) requires uses of the levy funds to relate closely to the interests of potential levy payers.

6. The Ministry for Primary Industries (MPI) currently administers 32 commodity levy orders that together collect around \$130 million per year. Industries included span the agriculture, horticulture, viticulture, fisheries and forestry sectors.

The New Zealand Citrus Industry

7. The New Zealand citrus industry is made up of 330 commercial growers, with 2,600 hectares planted mainly in Gisborne and Northland. Approximately 30,000 tonnes of citrus fruit were harvested in 2018.
8. In 2018, the New Zealand citrus industry generated \$66 million in total sales, with \$57 million from domestic sales and \$9.3 million from exports. Apart from some small niche markets such as Japan, the USA, the Pacific Islands and China, fresh citrus is mostly sold on the domestic market. New Zealand's contribution to global citrus production is less than 0.05 percent.

Policy

The Proposed Order

9. On 29 May 2019, I received an application from New Zealand Citrus Growers Incorporated (Citrus NZ) for a new commodity levy order on citrus fruit under the Act. This order will replace the Commodity Levies (Citrus Fruit) Order 2014, which expires on 23 February 2020.
10. The proposed levy will be imposed on all citrus fruit grown in New Zealand for commercial purposes. The levy will be payable to Citrus NZ, who will spend levy funds on behalf of levy payers and in accordance with the proposed levy order.
11. The proposed order is similar to the current order. The levy rates in the first year will remain the same as the current levy rates. This will raise approximately \$250,000 in levy revenue over the first levy year (2020/21) for Citrus NZ.
12. Citrus NZ has the ability to raise the levy rate each to year, to a maximum of 3 cents per kilogram for fresh fruit, and 1 cent a kilogram for fruit intended for processing.

Use of levy funds

13. The referendum paper informed levy payers as to how the levy money would be used. Potential levy payers have indicated, through their support for the proposed levy order in the levy referendum that they believe the uses to which the levy will be put closely relate to their interests. Each year levy payers will be consulted on how levy funds will be spent in the following year. Any individual project with a value in excess of \$100,000 will require special approval by growers at a general meeting of growers.

14. Citrus NZ has proposed to spend the levy on the following purposes:
 - a. research and development;
 - b. market research and development;
 - c. industry promotion;
 - d. quality assurance;
 - e. education and information;
 - f. grower representation;
 - g. protection or improvement of plant health; and
 - h. day-to-day administration of Citrus NZ.
15. The purposes outlined above are consistent with the requirements of section 10(2)(b) of the Act, which sets out the uses to which levy monies may be put.

Cost and benefits of the levy

16. The proposed levy will allow Citrus NZ to continue to deliver its industry-good activities, as outlined in paragraph 14 above.
17. I consider that the proposed order will provide benefits that significantly outweigh the costs imposed by the levy. This sentiment is endorsed by strong support from those who voted in the levy referendum, the majority of whom believe there will be a net benefit from the continuation of a compulsory levy.
18. The activities undertaken by Citrus NZ are industry-good in nature. It is therefore difficult to restrict the benefits of these activities to strictly those paying the levy. There is therefore a clear free-rider problem if these activities were to be funded by a voluntary levy. I consider that the activities undertaken by Citrus NZ would not be possible or would be underprovided if the levy were to be collected on a voluntary basis.

Compliance with the requirements of the Act

19. Section 5(2) of the Act requires proposed levy orders to be supported by the majority of voting levy payers, in terms of both number of voters and on a weighted basis. In the referendum held by Citrus NZ through April - May 2019, the majority of growers who voted supported the proposed levy.

Table 1: Results of Citrus NZ's levy referendum

Vote	Number of growers		Production volume	
	Number	Percentage	Volume (kg)	Percentage
Yes	88	86%	24,518,786	90%
No	14	14%	2,695,713	10%
Total	102	100%	27,214,499	100%

20. The participation rate for the referendum was 32 percent by number of potential levy payers. However by volume of production, the participation rate was approximately 90 percent of all citrus fruit harvested in that year (30 million kg was harvested in 2018). The average participation rate by number of participants for commodity levy referenda over the last six years is around 40 percent.
21. MPI has considered the referendum approach and the ballot material, and has advised me that the support referendum was competently devised, sufficiently publicised and distributed, and that all potential levy payers had been given a reasonable opportunity to vote.
22. I am satisfied that the application meets all the requirements of the Act. I therefore recommend that the Committee authorise the submission of this order to the Executive Council.

Impact Analysis

23. The Regulatory Quality Team at the Treasury has determined the regulatory decisions sought in this paper to be exempt from the requirement to provide a Regulatory Impact Assessment, due to the minor impact of the proposed levy on individuals, businesses and not-for-profit entities.

Compliance

24. The order complies with the following:
 - the principles of the Treaty of Waitangi;
 - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993; and
 - the principles and guidelines set out in the Privacy Act 1993.

Consultation

25. The Ministry of Business, Innovation and Employment, the Ministry of Foreign Affairs and Trade, the Treasury, and Te Puni Kōkiri were consulted on this paper and their feedback has been incorporated. The Department of the Prime Minister and Cabinet was also informed. Citrus NZ was consulted during the drafting of the order.

Timing and 28-day rule

26. The order is to come into force on 24 February 2020, following 28 days of Gazette notification.

Regulations Review Committee

27. I consider that there are no grounds under Standing Order 319 for the Order to be brought to the special attention of the House of Representatives.

Certification by Parliamentary Counsel

- 28.** The order has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Proactive Release

- 29.** Following Cabinet consideration, I intend to proactively release this paper in full within 30 business days.

Proactively Released

Recommendations

The Minister of Agriculture recommends that the Committee:

1. **Note** that New Zealand Citrus Growers Incorporated has applied for a new levy order on citrus fruit under the Commodity Levies Act 1990, to replace the Commodity Levies (Citrus Fruit) Order 2014, which expires on 23 February 2020;
2. **Note** that I have determined that the application complies with the requirements of the Commodity Levies Act 1990;
3. **Note** that this order will come into force on 24 February 2020; and
4. **Authorise** the submission of the Commodity Levies (Citrus Fruit) Order 2019 to the Executive Council.

Authorised for Lodgement

Hon Damien O'Connor
Minister of Agriculture